



BOARD OF APPEALS  
Erin Staro, Co-Chair  
Jesse Gelles, Co-Chair  
Robert De Vries

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BUILDING DEPARTMENT  
TOWN OF BROOKLINE

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 080021

Petitioners, Helen Shu and Richard Chiu applied to the Building Commissioner for permission to construct an additional living unit on the basement level per plans at 215 St. Paul Street. The application was denied and an appeal was taken to this Board.

On 11 June 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 24 July 2008, at 7:30 p.m. on the 2<sup>nd</sup> floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 3 and 10 July 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

### NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **RICHARD CHIU**

Location of Premises: **215 ST. PAUL ST BRKL**

Date of Hearing: **07/24/2008**

Time of Hearing: **7:30 p.m.**

Place of Hearing: **Main Library, 2<sup>nd</sup>. floor**

A public hearing will be held for a variance and/or special permit from

5.05, Conversions. Special Permit Required.

5.20, Floor Area Ratio. Variance Required.

5.22.3, Exceptions to Maximum Gross Floor Area, Special Permit Required.

5.50, Front Yard Requirements. Variance Required.

5.60, Side Yard Requirements. Variance Required.

5.90, Minimum Landscaped Open Space. Variance Required.

5.91, Minimum Useable Open Space. Variance Required.

6.01.2.a, General Regulations Applying to Required Off-Street Parking Facilities. Special Permit Required.

6.02.1, Table of Off-Street Parking Space Requirements. Variance Required.

6.04.2.d, Design of All Off Street Parking Facilities. Variance Required.

6.04.3, Design of All Off Street Parking Facilities. Variance Required.

6.04.12, Design of All Off Street Parking Facilities. Special Permit Required.

8.02.2, Alteration or Extension. Special Permit Required

of the Zoning By-Law to construct an additional living unit on the subject property per plans at **215 ST. PAUL ST BRKL**.

Said Premise located in a **M-1.5** district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Enid Starr  
Jesse Geller  
Robert De Vries**



At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Jesse Geller and Board Members, Rob DeVries and Jonathan Book. The petitioners were present as well as their architect, Frank Kouchen of HKA Consultants, 118 Cedar St., Wellesley, MA. The case was presented by Attorney Ronny Sydney, 370 Washington Street, Brookline, MA.

Attorney Sydney described the property as a three-story, four-unit attached brick dwelling in a row of buildings of similar appearance and style. Parking is provided at the rear of the building accessed by an alleyway off of Parkman Street that also serves the parking area of neighboring dwellings fronting on Parkman and Browne Streets. She said that the petitioners, Helen Shu and Dick Chiu, propose to legalize a basement unit in this four unit residential building. The petitioner recently purchased this building and the basement already contained a unit. They received a building permit to remodel the basement unit and expand it from a two bedroom, one bathroom unit to a four bedroom, two bathroom unit. The absence of an individual meter for the basement unit was noticed by the Town's electrical inspector and this triggered an investigation into the legality of the unit. No building permit for the basement unit had ever been issued and the Assessor's Office lists this building as a three family. The existing parking area at the rear of the building provides five narrow vehicle spaces, with access via a passageway between Parkman and Browne Streets. Attorney Sydney pointed out that the abutters, with one exception, all have similar basement units. Some have more than one basement unit. Attorney Sydney closed by stating, that in her opinion, with the changes on the plan dated 10 July 2008 page #AX3, by HKA Consultants, only special permit relief is required.

There were some neighbors who spoke in favor of this project by stating that they knew the owner who has property in the Addington Road area and takes very good care of his property.

There were several neighbors and citizens of Brookline present who spoke in opposition to establishing a basement unit with objections, including but not limited to, that there would be an increase in density in the area and, in particular, the number of students in the area which could lead to loud parties, a greater police presence, more garbage and more traffic and generally a reduction in the quality of life in the neighborhood. Those in opposition were concerned that Mr. Chiu as an absentee landlord might not take care of his property. Diana Spiegel spoke against the proposal stating that this is the most dense area in Brookline and that the neighborhood is reaching a tipping point from a family neighborhood to a student neighborhood. Ms. Spiegel also noted that she is concerned that a precedent not be established whereby property owners with illegally created apartments are “rewarded” by legalizing those units. .

Lara Curtis, Senior Planner delivered the findings of the Planning Department.

#### Section 5.05 – Conversions

#### Section 5.20 – Floor Area Ratio

#### Section 5.22.3 – Exceptions to Maximum Gross Floor Area

Floor Area	Maximum	Existing (as if there were no finished basement space)	Proposed*	Finding
Floor Area Ratio (% of allowed)	1.5 100%	1.42 95%	1.79* 119%	Variance**
Floor Area (s.f.)	6,876	6,548	8,246*	

\*After reviewing the proposed floor plans, the Building Commissioner determined that this floor area calculation did not include approximately 150 s.f. of floor area that should have been considered gross floor area.

\*\*Under *Section 5.22.3.b.2*, the Board of Appeals may grant an increase in floor area up to 120 percent for dwellings in M-1.5 zoning districts. Inclusion of all gross floor areas in the basement unit would exceed this 120 percent threshold, unless modifications to the unit are made.

#### Section 5.50 – Front Yard Requirements

#### Section 5.60 – Side Yard Requirements

#### Section 5.90 – Minimum Landscaped Open Space

#### Section 5.91 – Minimum Usable Open Space

Under Section 5.05, when converting a dwelling to create additional dwelling units in an M District, the Board of Appeals may by **special permit** waive any dimensional requirements except minimum lot size, provided no previously existing nonconformity to such requirements is increased



and all other requirements of the By-law for conversions are met. The exterior of the building is not being changed and the yard and open space on the lot are pre-existing, non-conforming conditions.

**Section 6.01.2a – General Regulations Applying to Required Off-Street Parking Facilities**

**Section 6.02.1 – Table of Off-Street Parking Space Requirements**

**Section 6.04.2.d – Design of All Off-Street Parking Facilities**

**Section 6.04.3 – Design of All Off-Street Parking Facilities (tandem spaces)**

Parking Requirements	Required/Allowed	Existing	Proposed	Relief
Parking Spaces	9	5	8 tandem <sup>§</sup>	Special Permit <sup>§§</sup>

<sup>§</sup>Under **Section 6.04.12**, the Board of Appeals may waive by **special permit** dimensional requirements for parking facilities to serve existing buildings.

<sup>§§</sup>Under **Sec. 6.01.2.a**, the Board of Appeals may waive by **special permit** up to 1/2 of the required parking spaces when a structure is converted for one or more additional dwelling units.

**Section 8.02.2 – Alteration or Extension**

A **special permit** is required to alter or enlarge a pre-existing non-conforming structure or use.

Ms. Curtis reported that a majority of the Planning Board was not opposed to the legalization of this renovated basement unit if it is brought into compliance with the maximum floor area allowed by special permit, or 120 percent of FAR. Many of the buildings in this area have basement units, and the renovation does not require any significant exterior alterations to the building. The Planning Board understands there are several issues regarding noise and vandalism in this general neighborhood, but these issues do not stem from the existence of basement units. The Board does not believe this use will be detrimental to the neighborhood. The Board does support the removal of one of the bedrooms in the unit, making it a three-bedroom unit compliant with the 120 percent FAR requirements, and a revised ground floor plan showing such should be submitted. The applicant has proposed to replace the five narrow, side-by-side parking spaces with eight tandem spaces (four behind four), which will mean paving over most of the grassy area to the rear of the building. An alternate scheme has also been proposed to retain the existing spaces and improve the landscaping on site, especially around the parking area. A majority of the Planning Board did not

agree on which parking scheme would be most appropriate: the Planning Board voted (2-2) to retain the five spaces and improve the landscaping, but the Planning Board also voted (2-2) to install eight tandem parking spaces. Therefore, the Planning Board voted (3-1) to recommend approval of the site plans and floor plans, prepared by HKA consultants, dated 6/7/08, subject to the following conditions:

1. **Prior to reinstatement of the building permit, the applicant shall submit a final site and landscaping plan, including the dimensions of the parking spaces, and a final ground floor plan subject to the review and approval of the Assistant Director of Regulatory Planning.**
2. **Prior to the issuance of a Certificate of Occupancy, the parking spaces at the rear of the building shall be striped, subject to the review and approval of the Assistant Director of Regulatory Planning.**
3. **Prior to reinstatement of the building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing the parking area stamped and signed by a registered engineer or surveyor; 2) a ground floor plan, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chairman called upon Michael Shepard, Building Commissioner, to deliver comments from the Building Department. Mr. Shepard explained the circumstances under which a permit to remodel the basement space was issued. He said that since overcrowding is a concern within the neighborhood, that the Building Department supports the alternate parking plan of five parking spaces shown on a July 2008 plan by Boardman Design, Cambridge, MA. Further, so as not to detract from the residential nature of the property that striping of the spaces not be required. Mr. Shepard said that the petitioner should be required to keep the landscaped open area. Citing at least one neighbor's concern regarding the meters on the front of the building, Mr. Shepard recommended that the Board require the removal of the subject meters to the rear of or inside the building. In addition and in order to alleviate concerns raised about



overcrowding, Mr. Shepard recommended the complete removal of all finishes, including the exterior window, electrical outlets and heat from the bedroom identified on previously submitted plans as "Bedroom #3" to render the space non-habitable. The affected area would therefore under the Zoning By-Law not be includable within to the gross floor area for purposes of determining Floor Area Ratio, reducing the gross floor area of the building. In response to inquiries made by the Board concerning the applicability of the sections of the By-Law pertaining to "de-commissioned" space, Mr. Shepard opined that since in fact no Certificate of Occupancy was ever issued for the basement unit that, in fact, it was never "commissioned." Therefore, he reasoned, that it could not be "decommissioned". He said that if the one bedroom were eliminated, it would not count toward habitable space.

In closing, Attorney Sydney stated that the proposal, as amended by removal of "Bedroom #3" as shown on the prior plans (located adjacent to the laundry, mechanical and storage area), was in keeping with the neighborhood and fulfills the requirements for the required special permits. At the Board's request, the owner agrees to reduce the number of bedrooms from four to three. Before an occupancy permit is issued, the owner will be responsible for removing all finishes from the identified bedroom; removing everything down to the studs and floor making it an uninhabitable area. She also stated that the parking will remain as is with a landscaping plan submitted by Barbara Boardman to the Town for approval and to be implemented by the petitioner. Attorney Sydney stated that the plan of record regarding the interior changes would be the plan dated 10 July 2008, sheet AX3 by HKA Consultants LLC, 118 Cedar Street, Unit #3, Wellesley, MA 02481. She said that the owner will also submit to the Town for approval a landscaping plan for the front of the building and to be implemented by the petitioner.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the conditions necessary for the requested relief by special permit pursuant to Sections 5.05, 5.22.3.b.2, 6.04.12, 6.01.2.a and 9.05, all of the Zoning By-Law, having been satisfied, it is appropriate to grant all the special permit relief requested. In particular, the Board made the following findings pursuant to **Section 9.05**:

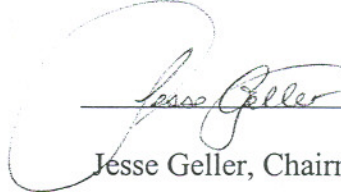
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. **Prior to reinstatement of the building permit, the applicant shall submit a final site and landscaping plan, both front and rear, including the dimensions of the parking spaces, an aesthetic barrier or fence to separate the parking area from the open landscaped area and a final ground floor plan subject to the review and approval of the Assistant Director of Regulatory Planning.**
2. **Prior to the reinstatement of the building permit the applicant shall remove all interior finishes from former bedroom #3 to include, heat/ventilation, wall ceiling and floor finishes, electrical outlets and removal of the exterior window.**
3. **Prior to the issuance of a C of O, the applicant shall remove the electrical meters from the front of the building.**
4. **Prior to reinstatement of the building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing the parking area**



stamped and signed by a registered engineer or surveyor; 2) a ground floor plan, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

  
Jesse Geller, Chairman

Filing Date: August 22, 2008

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

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TOWN OF BROOKLINE  
REGISTRARS OF VOTERS

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